

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.349 of 2006

Decided on: September 7, 2006

Puran Dass

.....Appellant.

VERSUS

Narain Dass

.....Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. G.D. Verma, Senior Advocate,
with Mr. B.C. Verma, Advocate.

For the respondent : Nemo.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent-plaintiff filed a suit for recovery of a sum of Rs.95,000/- against the appellant-defendant, pleading that when in the year 2000 felling programme for Dharampur area was declared, in accordance with the provisions of H.P. Forest Produce (Regulation of Trade) Act, 1982, he wanted to fell 19 *Deodar* trees standing on his land and so he appointed appellant-defendant as his attorney for processing the matter regarding grant of permission for felling those trees and the sale thereof to the Government agent, i.e. Forest Corporation. He pleaded that the appellant-defendant took up the matter with the agent, i.e. the Forest Corporation, and obtained permission. Thereafter, trees were felled and the timber was sold to the Forest Corporation. The appellant-defendant received the sale

Whether the reporters of the local papers may be allowed to see the judgment?

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proceeds minus expenses of the agent, but did not pay the agreed amount of money to the plaintiff. It was stated that as per agreement, the defendant was to pay to the plaintiff at the rate of Rs.5,000/- per tree and the rest of the amount he could keep with him.

3. Defendant-appellant contested the suit. It was stated that the suit was not maintainable. It was not denied that the appellant-defendant had entered into an agreement but it was stated that the appellant-defendant had paid the money to the plaintiff, in terms of the agreement.

4. Trial Court framed issues based on the pleadings of the parties and recorded the evidence and ultimately returned the finding that the defendant had not paid the agreed amount of money to the plaintiff and consequently a decree for Rs.95,000/-, together with interest at the rate of 4% per annum, was passed in favour of the respondent-plaintiff and against the appellant-defendant.

5. Appellant went in appeal to the Court of the District Judge. Appeal has been dismissed. Finding and decree of the trial court stand affirmed.

6. A reading of the judgment of the first Appellate Court shows that the appellant-defendant argued that the agreement between him and the respondent-plaintiff was void, being violative of the provision of Section 4 of H.P. Forest Produce (Regulation and Trade) Act, 1982. The District Judge has rejected the plea, holding that the defendant had been appointed as power of attorney for dealing with the Forest Corporation on behalf of the plaintiff and this

was not a case of sale of trees by the plaintiff in favour of the defendant.

7. I have heard the learned counsel for the appellant. The first and the foremost contention raised by the learned counsel is that the agreement was void and as such it could not have been enforced. For several reasons, the contention merits rejection. First of all, no such plea had been raised either specifically, or even by implication, in the written statement. Learned counsel stated that the objection regarding maintainability taken in the written statement meant this plea only. The contention has been noticed only to be rejected. An overall reading of the written statement shows that this objection was raised on account of the stand taken in the written statement that the money already stood paid to the plaintiff, in terms of the agreement and not on account of the agreement being void as is now being canvassed.

8. Secondly, the evidence on record shows that this was not a case of sale of trees by the plaintiff in favour of the defendant. Defendant had been appointed as special attorney, per averment made in the plaint, to deal with the Forest Corporation for the sale of the trees to the said Corporation on behalf of the plaintiff. The averment has not been denied in the written statement. Therefore, under these circumstances there cannot be any escape from the finding that the defendant acted simply as an attorney of the plaintiff, though for consideration, the consideration being the difference between the rate at which the plaintiff was to be paid for the 19 trees

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standing on his land and the money which the defendant was to receive from the Forest Corporation.

9. Another reason for rejecting the aforesaid contention of the appellant is that admittedly he had received the money representing the value of 19 trees from the Forest Corporation, per testimony of PW-1, an employee of the Forest Corporation, and per his own implied admission in the written statement, because, as already noticed, in the written statement he has stated that the money had already been paid by him to the plaintiff, which means he must have received the money from the Forest Corporation before paying it to the plaintiff. If that is so, before setting up the plea that the contract is void, on account of being violative of Section 4 of the H.P. Forest Produce (Regulation and Trade) Act, 1982, the appellant-defendant must refund the benefit derived by him under the alleged void/illegal contract.

10. No other submission pertaining to any point of law has been raised.

11. Since no substantial question of law arises, the appeal is dismissed.

September 7, 2006_(sd)

(Surjit Singh), J.